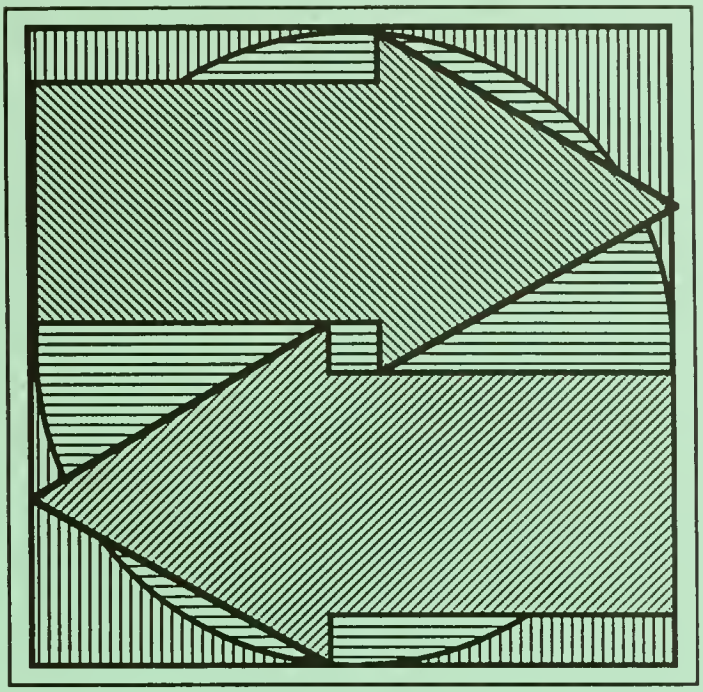
discipline handling guide



state personnel division
department of administration

january 1, 1992

STATE OF MONTANA
Discipline Handling Guide

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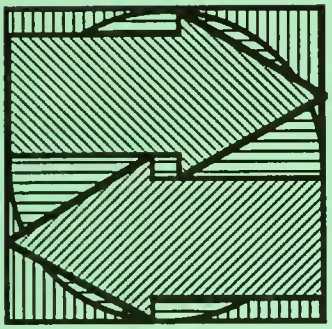
procedures
(continued)

This guide is designed to provide assistance to state supervisors and managers in administering disciplinary action. This guide is not state policy or administrative rule. It is not binding on any agency; it does not establish practice or set precedent.

The adminstrative rules covering discipline handling can be found at ARM 2.21.6505 et seq., and at Policy 3-0130, Montana Operations Manual, Volume III.



discipline and effective supervision

what is discipline?

"Discipline" represents perhaps the most difficult area of supervision. In part, this difficulty stems from the many meanings people place on the word itself — discipline . . .

dis•ci•pline *n.* [ME. < OFr. *descepline* < L. *disciplina* < *discipulus:* see DISCIPLE] 1. a branch of knowledge or learning 2. a) training that develops self-control, character, or orderliness and efficiency b) strict control to enforce obedience 3. the result of such training or control; specif., a) self-control or orderly conduct b) acceptance of or submission to authority and control 4. a system of rules, as for the conduct of members of a monastic order 5. treatment that corrects or punishes

(Webster's New World Dictionary)

In our approach to discipline, we will emphasize its definition as training that develops self-control, orderliness, and efficiency. When necessary, it includes supervisory actions that correct employee behavior. Although a supervisor may sometimes need to penalize employee behavior, that aspect of discipline must be secondary; it should be used only when necessary.

This guide will assist you in your job as a supervisor in a state agency. As you read this material, keep in mind that preventive action — establishing and maintaining good "discipline" in your unit — is preferable to taking disciplinary action.

what are my supervisory responsibilities?

As a supervisor, you are responsible for developing and maintaining the highest possible level of performance in your work unit. You are also responsible for developing and maintaining appropriate conduct and good working relationships in your unit.

In your responsibilities as a supervisor, you need to be aware of things employees must know to perform their jobs efficiently.

These include . . .

- the agency's policies, rules, and regulations governing the employees' work,
- the proper kind of behavior expected of employees to establish and maintain good working relationships,
- the objectives, duties, and tasks each employee is expected to perform.

what are my supervisory responsibilities? (continued)

- what you, as the supervisor, consider the standards of performance for the job,
- knowing the scope of your authority to impose or recommend disciplinary action,
- how well each employee is meeting those expected standards of performance,
- how the employees can improve their performance and working capabilities.

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how do these relate to supervisory practices?

It is essential that, with your help, employees learn and practice constructive behavior patterns in their work. Good working habits will have a "ripple effect," influencing the behavior of every employee in the unit.

Set reasonable work objectives for your employees. A key point is to set objectives that are reasonable both to you and your employees. Employee participation in setting objectives can result in realistic goals that employees are committed to achieving.

Good supervisory practice requires that you keep complete documentation on performance and conduct. This enables you to justify decisions you make concerning performance appraisal and disciplinary action.

Good supervisory practice requires that you be willing to make such decisions promptly, impartially, and with justification. If an employee exhibits unacceptable conduct or performance, initiate corrective action immediately.

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how should I deal with problem situations?

No matter how good a supervisor you are, problems will occasionally arise in your work group. The development of a problem does not reflect on your ability as a supervisor; how you handle it does.

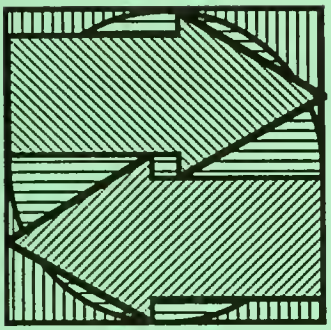
The occurrence of a problem does not reflect on your ability as a supervisor; how you handle it does

You should encourage and help the employee to solve the problem. Many situations that have the potential to develop into chronic problems can be solved with the proper communication between the employee and the supervisor.

If the solution to the problem with the employee is within the scope of your responsibility, examine the situation and try to correct the problem. If the problem is above or beyond your authority, make sure it is referred to the proper person, such as your supervisor or the personnel officer. Ensure that the employee knows the outcome of your discussion with the other person.

If you supervise members of a bargaining unit, be sure you are familiar with the terms of the union contract before taking or recommending any action.

Often, simple courtesy, straightforward discussion, and "clearing the air" can prevent minor problems from growing into grievance actions. A later section of this guide provides tips on conducting meetings with employees (see p. 20).



the progressive discipline process

what is progressive discipline?

Progressive discipline is a process of applying disciplinary actions, moving from less serious to more serious actions based on the initial severity or on repetition of the problem behavior. For most conduct problems, discipline will begin at step one. Subsequent infractions of the same policy by the same employee will require more serious disciplinary action.

Some infractions — such as theft, assault, or falsifying records — are very serious. These problems merit disciplinary action that begins at a higher level than step one. To determine which action to take, you must consider . . .

- the offense
- the relevant policy
- the circumstances
- the employee
- past treatment of similar problems

what are the progressive discipline steps?

Informal disciplinary actions
1. corrective counseling
2. oral warning

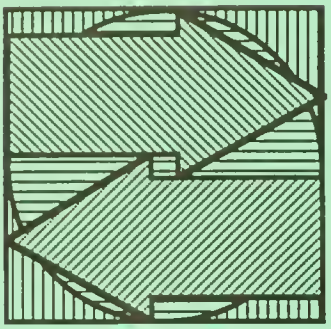
Formal disciplinary actions
3. written warning
4. suspension without pay
5. disciplinary demotion
6. discharge

Management must decide which step of the progressive discipline process is appropriate in a given situation. In addition, you must determine the specific actions to be taken and the order of these actions.

Failure to follow agency policies on progressive discipline may expose the State and the agency to legal liability.

what about employee assistance?

Employee assistance may be considered at any stage of the progressive discipline process. You may find more information about employee assistance on page 24 of this guide. In addition, a detailed Employee Assistance Guide is available from the State Personnel Division.



critical concepts of discipline

how has the employment environment changed?

Time was, not so long ago, when employers enjoyed nearly unlimited power to discipline and discharge employees. Over the last several years, however, this arbitrary power has been limited by statutes and court decisions.

Some important cases have dealt with specific issues, such as discrimination and workers' compensation. More importantly, a growing number of court decisions have outlined the employer's responsibility to show just cause for severe disciplinary actions, such as discharge. And public employers, such as the state, must afford due process to the affected employee.

The next couple of sections explain what these concepts mean for state supervisors.

Montana's Wrongful Discharge from Employment Act sets out certain rights and remedies with respect to wrongful discharge. You can read a description of this law on page 19 and its full text in the appendix.

what is just cause?

The term "just cause" — also called "good cause" or simply "cause" — eludes precise definition. Courts and arbitrators have wrestled with the term, trying to pin a precise meaning on it.

In one important case, *Pugh v. See's Candies* (1981), a California appeals court said the following:

> The terms "just cause" and "good cause," as used in a variety of contexts ... have been found to be difficult to define with precision and to be largely relative in their connotation, depending on the particular circumstances of each case. Essentially, they connote a fair and honest reason, regulated by good faith on the party [employer] exercising the power.

The Montana Supreme Court has relied on this same language in its own deliberations (*Flanigan v. Prudential Savings and Loan Assoc.,* 1986).

For our purposes, the state's discipline-handling rules provide a relevant definition of just cause:

> ... reasonable, job-related grounds for taking a disciplinary action based on [the employee's] failure to satisfactorily perform job duties or disruption of agency operations. Just cause includes, but is not limited to, a violation of an established agency standard, legitimate order, policy or labor agreement, failure to meet applicable professional standard or a series of lesser violations, if the employee would reasonably be expected to have knowledge the action or omission may result in disciplinary action.

"Just cause" means a fair and honest reason for taking disciplinary action

what is just cause? (continued)

The key words in this definition are **reasonable** and **job-related**. As you consider whether to take disciplinary action, you need to consider a number of factors to determine if just cause is present. The following seven-part test is commonly used by arbitrators to determine if just cause is present.

1. Did the employee's alleged behavior violate a specific work rule, policy, or managerial order?

2. Did the employer give the employee forewarning of the possible or probable consequences of the employee's conduct?

   - written policies
   - orientation and training
   - verbal and written warnings

3. Was the rule or managerial order that the employee violated reasonably related to the orderly, safe, and efficient operation of the agency?

4. Did management, before administering discipline to an employee, make an effort to discover whether the employee did, in fact, violate a rule or order?

   - The investigation should normally occur prior to any disciplinary decision.

5. Was the investigation conducted fairly and objectively?

   - The employer must make a reasonable, "good faith" effort to discover all the facts about a given case.
   - It is not required to provide evidence that is preponderant, conclusive, or "beyond a reasonable doubt," but it must be truly substantial.

6. Has the employer applied its rules, orders, and penalties even-handedly and without discrimination among all employees?

   - If not, the apparent or real discrimination may result in the overturning or modification of a disciplinary action.
   - If the employer has been lax in enforcing rules and policies and decides to "get tough," it should notify employees beforehand of its intent to enforce all rules and policies as written.

7. Was the degree of discipline administered in a particular case reasonably related to a) the seriousness of the employee's offense, and b) the employee's record of service?

   - A trivial offense does not merit harsh discipline unless the employee has committed the same offense a number of times in the past.
   - Management should refer to the employee's "record of service" only to determine the severity of discipline.
   - If two or more employees commit the same offense, their respective records provide the only proper basis for "discriminating" among them in administering discipline.

Essentially, to show just cause, management must 1) show that the employee violated a specific policy or rule, and 2) show that the employee was informed of the rule and the consequences of violation

Keep in mind that the state's discipline-handling rules require the supervisor to have just cause for taking any formal disciplinary action.

what is due process?

The U.S. Constitution (Fourteenth Amendment) and the Montana Constitution (Article II, Section 17) state that the government shall not deprive a person of property or liberty without due process of law. Statutes or administrative rules may give public employees a "property interest" in continuing their employment with an agency.

If a public employee has a "property interest" in his or her position, the employee cannot be deprived of that interest (i.e., terminated) without "due process of law." The state and federal constitutions determine what process is "due" in a given case.

the state's grievance procedure — properly followed — satisfies the due process requirement

In general, due process requires that the employee be given **notice** and an **opportunity for a hearing** in the course of formal disciplinary action. Under the state's discipline-handling rules, this requirement means . . .

> . . . an employee:
> 1. is informed of the action being taken and the reason for it; and
> 2. has an opportunity to respond to and question the action and to defend or explain the questioned behavior or actions.

To ensure that due process is provided, the state rules require that each formal disciplinary action include written notification to the employee. Critical elements of this notice include:

1. the just cause (reasons) for the disciplinary action,
2. a description of the disciplinary action, including dates and duration, if applicable,
3. the improvements or corrections expected of the employee,
4. consequences (further discipline) if the employee fails to improve or correct behavior, and
5. notice of the employee's right to grieve the disciplinary action.

The written notice must be presented to the employee for his or her review and signature. If the employee refuses to sign the notice, a witness to the refusal must sign the notice in the presence of you and the employee. Preferrably, the witness will be an agency personnel officer or your supervisor.

In addition to grievance rights, the employee has the right to respond to the notice, either verbally, in writing, or both. Any written response must be attached to the notice and included in the employee's personnel file.

what about due process rights <u>before</u> discharge?

Recent court cases have affected the procedures for discharging permanent state employees. In particular, the U.S. Supreme Court decided *Loudermill v. Cleveland Board of Education* in March, 1985, yielding clearer guidelines for a hearing before discharge.

The state discipline-handling policy requires that written notice and an opportunity to respond be given to an employee facing formal disciplinary action. The state grievance policy also provides the opportunity for a hearing after ter-

what about due process rights before discharge? (continued)

mination. Under the impact of the *Loudermill* case, however, you should consider the following suggestions that would meet the need for a "pretermination hearing."

- Never fire an employee "on-the-spot." Allow a "cooling-off" period before making a decision on discharge. If it is vital to remove the employee from the work situation, suspend him or her, pending the final outcome.

- A pretermination review must be conducted to determine if there are reasonable grounds to believe the allegations against the employee are true and that the allegations support the discharge decision.

- The person conducting the review should be someone who has not been involved in recommending the employee's discharge. Preferably, the person would not be within the line of supervision above the employee.

- The review shall contain the following procedural steps:

  a. Notice to the employee of the allegations supporting the recommended discharge action;

  b. Notice to the employee of the substance of the relevant evidence supporting the allegations;

  c. An opportunity for the employee to meet with the investigator and present statements from rebuttal witnesses.

  To be effective, the person conducting the review should be well versed in the legal principles governing employee terminations, as well as the state's personnel policies and practices.

- The pretermination review or hearing need not resolve definitely the propriety of the discharge; the review is an initial check against mistaken decisions. Its purpose is to determine if there are reasonable grounds to believe that the charges against the employee are true and support the proposed action.

- Finally, a pretermination review or hearing does not replace the opportunity for a hearing after discharge, as provided by the state grievance policy.

a neutral third party should hear the employee's side of the story and investigate the situation before the decision to discharge is made

what about documentation?

We have said that the effectiveness of discipline hinges on the quality of the supervisor's interactions with an employee. Of equal importance is the supervisor's attention to documenting the facts related to discipline.

Keep in mind the often-quoted saying: **If it isn't written down, it didn't happen.** Without adequate documentation, management is virtually powerless to resolve a long-term disciplinary problem.

Like disciplinary actions, documentation falls into two categories: informal and formal.

what are informal documents?

Informal documents are those kept by the supervisor prior to any written disciplinary notice to the employee. The most common — and most important — among informal documents are the supervisor's personal notes. These notes may take the form of a journal, log, or calendar.

The supervisor's notes are made at the time of the occurrence — sort of a running account of an employee's conduct and what has been done about it. Of equal importance with recording the notes is making sure that you discuss the issues with the employee. You should not document anything that you have not discussed or will not discuss with the employee.

If it isn't written down, it didn't happen

When recording information in your journal or log, restrict your entries to important facts about the discipline problem. These should include . . .

- date(s), time(s), and place(s) of the events or incidents in question,
- names of other persons involved in the incident, whether as witnesses or participants,
- a specific, objective description of the employee's behavior — state facts, not conclusions,
- a summary of your discussions with the employee, including what the employee said in defense of his or her behavior.

Other informal documents include any materials that provide evidence of the problem behavior. Some examples are ...

- letters of complaint from other units, agencies, or members of the public,
- written and signed statements from witnesses to the employee's conduct,
- examples of the employee's work, if related to the behavior in question,
- business records, such as time sheets, work logs, equipment releases, and so on, if they are related to the behavior in question,
- memos from supervisor to the employee that outline the results of corrective counseling.

what are formal documents?

Formal documents are those with the employee's signature on them. Most formal documents are entered into the employee's personnel file, with a copy given to the employee. Often, formal documents represent notification of formal disciplinary action.

Other formal documents might include ...

- the corrective interview form (see page A-3) **if** your agency requires its use,
- indication that the employee has been informed of pertinent rules and policies,
- completed performance appraisals, if poor performance is the reason for disciplinary action.

what are formal documents? (continued)

Formal disciplinary documentation carries some requirements ...

- the employee must review the document and receive a copy,
- the employee must sign the document (or a witness must sign, if the employee refuses to) before the document is placed in the employee's personnel file,
- the employee has the right to respond to the document, either verbally, in writing, or both. Any written response must be included with the document in the personnel file.

Before presenting a formal document to the employee, the supervisor must ensure that the document contains absolutely no errors. Typos, misspellings, grammatical errors, and transposed numbers may seem minor, but they can erode your credibility and provide the basis for an employee to challenge a disciplinary action.

It is also a good idea to present the document for review by your supervisor or your personnel officer, or both. They can double-check to see that the notice meets requirements. They can also provide an additional proof reading to prevent the types of errors mentioned above.

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how do formal documents relate to informal documents?

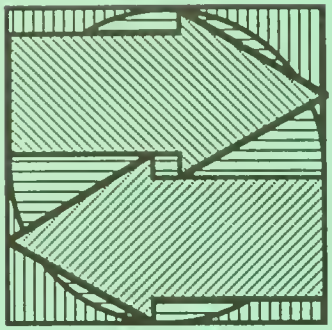
Formal documentation becomes management's record of disciplinary action. If an employee challenges a disciplinary action, this record provides the main element of management's defense — in a grievance, administrative hearing, or lawsuit.

Informal documentation provides the foundation for formal documentation. In writing a formal document, the supervisor refers to the informal documentation for the necessary information. The evidence the supervisor has gathered thus becomes a part of the record.

Formal documentation is only as good as the informal documentation that supports it.

example of supervisory log entries ...

*2/3/9_*	*telephone usage*	*Discussed with Josh Benue at 11:30 a.m. today the issue of telephone usage. At issue were long-distance calls on his phone printout that appeared personal. He admitted that they had been personal calls. I explained the policy on phone usage -- that it prohibits personal, long-distance calls on the state billing system. He said he understood. I told him the discussion today constituted an oral warning.*
*3/22/9_*	*absence without notice*	*Josh Benue was absent from work yesterday, 3/21, without prior approval. I received no notification at all yesterday. This morning when he came in, Josh explained that he had stayed home ill. I reminded him of the requirements for notification of leave: he must notify me by phone if he is taking leave without prior approval. I informed him that our discussion constituted a corrective counseling.*



informal disciplinary actions

why use informal disciplinary actions?

Most conduct or performance problems are minor in degree. This doesn't mean that they are unimportant, but that they do not initially merit formal disciplinary action. They are, in fact, important to you, and the sooner you deal with them appropriately, the less the likelihood they will develop into major problems.

By dealing with minor problems informally, you help to maintain a good working relationship with the employee. You can prevent the employee's resentment or anger that might accompany "harsh" actions unbefitting a minor problem.

Whether you consider a problem "minor" will depend on at least three considerations: the infraction by the employee, its impact on the unit's operations, and past practice in dealing with similar infractions. Minor infractions may include ...

- a routine performance error
- tardiness
- leaving the workplace without permission
- inappropriate use of work time
- rudeness to the public or to coworkers
- inappropriate use of state equipment
- smoking in an unauthorized area
- . . . and so on

these sections contain examples of infractions that <u>may</u> merit informal disciplinary action. the action you decide to take will depend on the circumstances of each specific situation

corrective counseling

Corrective counseling is a constructive, informal step taken to improve unsatisfactory employee behavior. The key part of the process is usually an interview in which the supervisor and employee agree on the nature of the problem and the necessary steps to correct it.

The success of corrective counseling hinges on two factors: 1) conducting it in a positive, nonthreatening manner, and 2) obtaining the employee's agreement that a problem exists and that he or she is responsible for his or her behavior.

The following Seven-Step Coaching and Interview Model provides a helpful guide for informally counseling an employee on a conduct or performance problem.

1. State your purpose — get to the point.

2. Describe the problem in specific, behavioral terms.

3. Listen! Invite the employee's self-evaluation and try to understand.

corrective counseling (continued)

4. Agree on the cause or causes of the problem.

5. Seek corrective ideas from the employee. Mutually develop a plan to correct the problem.

6. Have the employee sum up the discussion and the solution.

7. Set a follow-up meeting, if appropriate, to review progress and change in the employee's behavior.

At the completion of such an interview, you should document it in your records. The note should record the employee's name, date and time of the interview, the problem, and the agreed solution. Also note the date and time of any planned follow-up.

The corrective interview form (see page A-3) may be used to document this action. If it is used, the employee **must** receive a copy of the form.

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oral warning

If corrective counseling fails to produce needed improvement, or if the infraction warrants starting progressive discipline at a more serious step, you should consider giving an oral warning.

Within the progressive discipline process, an oral warning should be given immediately if a problem recurs — that is, a problem that has already been discussed in corrective counseling.

If you are considering issuing an oral warning as the first action you take, consider these factors: the infraction by the employee, its impact on the unit's operations, and past practice in dealing with similar infractions.

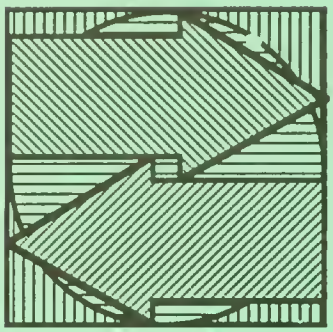
Some infractions that may warrant an oral warning as a first step include . . .

- minor safety violations
- first misuse of sick leave
- absence without notification
- receiving a traffic citation while using a state vehicle
- ... and so on.

When issuing an oral warning, you should make it clear to the employee that it is a disciplinary action. For example, you might say, "This is an oral warning. It is a step in the progressive discipline process." Such a statement reduces the opportunity for an employee to protest a subsequent, more severe disciplinary action by claiming that there were no previous warnings.

It is important for you to maintain informal documentation of an oral warning, including the employee's name, the date and time, and the infraction. An appropriate place for this documentation is in your supervisory journal or log.

Even with an informal disciplinary action, make it clear to the employee that it is a step in the disciplinary process



formal disciplinary actions

what are formal disciplinary actions?

Formal disciplinary actions are management procedures designed to correct employee conduct. In general, they are applied when informal measures have failed to produce the desired change in behavior. However, some serious infractions may warrant formal discipline on the first occurrence.

In order of severity, formal disciplinary actions include ...

- written warning or reprimand
- suspension without pay
- disciplinary demotion
- discharge

Any formal disciplinary action requires **written notice** to the employee. The section on due process (see p. 6) describes specifically what the notice must contain. Each of the sections that follow include one or more examples of written notice.

Whenever possible, a meeting between the supervisor and the employee should be part of any disciplinary action. Such a meeting has two purposes: 1) it communicates to the employee how serious the situation is, and 2) it provides an opportunity to answer any questions the employee may have.

The section beginning on page 20 contains some pointers for conducting effective meetings with employees.

these sections contain examples of infractions that <u>may</u> merit formal disciplinary action. the action you decide to take will depend on the circumstances of each specific situation

written warning

A written warning is the third step in the progressive discipline process and the first among formal disciplinary actions. Its intent is to notify an employee of unsatisfactory performance or conduct. It also communicates what improvement or correction you expect from the employee.

As the name implies, a written warning informs the employee of the consequences, should he or she fail to improve or correct the behavior in question.

When an oral warning fails to produce the desired changes in employee behavior, the supervisor should issue a written warning. However, some infractions may warrant a written warning on the first occurrence. Examples of such infractions may include ...

- safety violations that pose an

written warning (continued)

imminent threat of injury
- assault (no physical contact or weapon) on a co-worker
- insubordination
- ... and so on

A written warning must include the same elements as all other written disciplinary notices:

1. the just cause,
2. the disciplinary action,
3. the consequences of failure to improve or correct behavior,
4. notice of grievance rights, and
5. the employee's signature

The example on the next page shows the written warning issued as a letter to the employee. You may also use the Written Warning Form (see appendix page A-4). If you complete that form accurately, you fulfill all the necessary requirements for a written warning. You can get the form from your personnel officer.

In the example here — and all other examples of formal disciplinary notices in this section — the extreme left column provides labels for the elements of the notice. These labels help explain the document; they would not be included on an actual notice given to an employee.

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suspension without pay

A suspension without pay is an unpaid leave of absence ordered by management. It requires the employee to remain off the job for a specified period of time.

Imposition of a suspension without pay represents a formal action taken against the employee's behavior. As such, the supervisor must show just cause, due process, and adequate documentation.

Suspension without pay is the fourth step in the progressive disciplinary process. If a written warning fails to produce the desired change in behavior, the supervisor may impose a suspension.

you should verbally suspend an employee only when you think it is necessary to remove the employee from the work setting

However, some infractions may warrant a suspension on the first occurrence. Examples of such infractions may include ...

- false or defamatory public statements about an employee or the agency
- divulging confidential agency information
- sexual harassment
- physical fighting on the job
- gross insubordination
- ... and so on.

Imposing a suspension may take one of two forms:

1) a written suspension issued to the employee in a disciplinary meeting, or

2) a verbal suspension issued to the employee at the time of the infraction (followed by written notice).

You should verbally suspend an employee only when the situation demands it — that is, when you think it is necessary to remove the employee immediately from the work environment. Such necessity may arise from a fight, gross insubordination, or some other

Continued on page 15

example of a written warning

Subject: Warning for Absence Without Approved Leave

Date: May 20, 199_

Dear Mr. Doe:

the just cause

On May 18, 199_, in my office, I discussed with you an unauthorized three-day absence. You were absent on May 12, 13, and 14, 199_, without permission or adequate justification. You have been informed that if you are ill, or if an emergency prevents you from reporting to work, you must call me before 8:30 a.m. on the day of your absence. With this occurrence, you did not call me until 10:15 a.m. on Saturday, May 15.

documentation (exact dates, times, previous, discipline, etc.)

You were given an oral warning on March 7, 199_, about taking time off without my approval in advance. At that time, you were told that you must have approval three days in advance of the absence, except in situations of illness or emergency described above.

statement of discipline

I am hereby formally warning you that future unauthorized absence will result in additional disciplinary action and could result in termination of your employment with this agency. A copy of this letter will be placed in your personnel file.

how to correct

You will correct this problem by following the procedures stated in paragraphs 1 and 2 of this letter.

notice of rights

You may provide a written response to this warning. You may also file a grievance in accordance with 3-0125, Montana Operations Manual.

Sincerely,
Gene Jackson, Bureau Chief

(Your signature acknowledges that you have had the chance to review and comment on this notice — not that you necessarily agree with it.)

employee signs

Employee's signature _____ date _____

suspension without pay (continued)

situation where a "cooling off" period is desirable.

When verbally suspending an employee, make the action clear: "You are suspended without pay and are to leave work immediately." A **written notice** of suspension must follow as soon as possible.

In all cases of suspension without pay, the written notice must include the same elements as all other written disciplinary notices:

A suspension without pay normally applies to conduct matters and would not be used to deal with performance problems

1. the just cause,
2. the disciplinary action,
3. the consequences of failure,
4. notice of grievance rights, and
5. the employee's signature

An employee who is suspended without pay may not use any accrued leave or compensatory time during the suspension. Holiday pay is administered in accordance with the rule on holidays. The duration of suspension might interrupt the state's share of benefit contributions for the employee. Consult with your personnel officer about the effect on benefits prior to drafting the suspension notice.

Your investigation after a verbal suspension may reveal facts that exonerate the employee or mitigate the discipline. In such a case, the suspension ends, and the employee receives pay and benefits for the time away from the job.

The following page illustrates the written notification of suspension without pay. The extreme left column provides labels for the elements of the notice. These labels help explain the document; they would not be included on an actual notice given to an employee.

disciplinary demotion

A disciplinary demotion is a formal action involving reassignment of an employee. The employee is removed from his or her current position and placed in a position with reduced responsibilities and pay.

Disciplinary demotion is most commonly used as a way of resolving a chronic performance problem. It is seldom applied to a conduct problem.

As with other formal disciplinary actions, imposition of a demotion requires **written notice** to the employee, containing all the elements previously discussed.

You must work closely with your agency personnel officer to accomplish a disciplinary demotion. Because the action adversely affects the employee's salary, it must be administered in compliance with the state's pay plan rules (3-0505, Montana Operations Manual, Vol. 3, Rule 1814). Your personnel officer can discuss these pay provisions with you.

example of a suspension without pay notice

Subject: Suspension Without Pay

Date: March 20, 199_

Dear Mr. Wilson:

statement of discipline

This letter is to inform you that you are suspended without pay for the dates March 21 and March 22, 199_. Your suspension begins at 8 a.m., March 21, and ends at 5 p.m., March 22. You will report back to work at 8 a.m. on Monday, March 25, 199_ .

the just cause and documentation (exact date, time, description of behavior)

This disciplinary action is based on an incident on March 19, 199_ , at 3:20 p.m., in which three witnesses saw you instigating an argument with Dave Sloan. During the incident, you used profane and abusive language toward Sloan and hit Sloan with your fist. Verbal and physical assault of this nature is totally unacceptable in the work place.

how to correct

If, in the future, you have problems or disagreements with your fellow employees at work, you will bring the problem directly to me to resolve. You are prohibited from any use of abusive or profane language and any physical abuse of coworkers.

consequences of failure to correct

Any further incident of this nature will result in the termination of your employment with this agency.

notice of rights

You may provide a written response to this warning. You may also file a grievance in accordance with 3-0125, Montana Operations Manual, Volume 3.

Sincerely,

Fred Smith
Division Administrator

(Your signature acknowledges that you have had the chance to review and comment on this notice — not that you necessarily agree with it.)

employee signs

Employee's signature _____ date _____

discharge

Discharge means an employee is fired for just cause. Because it is an extreme measure, you must give thorough consideration to all aspects of a case before recommending discharge. When discharge is necessary, you should consult with your supervisors, personnel officer, agency legal staff, and other appropriate people to obtain a unified approval for the action. *(Read pages 8 & 9 again.)*

you should obtain unified agency approval before making the decision to discharge

Within the progressive disciplinary process, discharge is, of course, the final step. It is appropriate when other disciplinary actions have failed to resolve a conduct or performance problem that directly affects the unit operations.

In addition, some infractions are so serious that they warrant discharge on the first occurrence, pending your investigation. Examples of such infractions may include ...

- theft of state or employee property,
- unauthorized possession of firearms on the job,
- assault with a dangerous weapon against another employee,
- vandalism of state property,
- deliberate sabotage or falsification of records,
- ... and so on.

In establishing just cause, you must conduct a thorough investigation into the case. The evidence should leave no doubt about 1) the employee's culpability for the offense, and 2) the employee's prior knowledge of the rules or policies prohibiting the offense.

When the decision to discharge has been made, you and other agency managers will draft a letter of discharge, containing these elements:

1. the statement of discharge,
2. the just cause for the action,
3. documentation of just cause,
4. notice of due process rights,
5. an attached copy of the state grievance policy

As a part of the discharge process, you should meet with the employee, if at all possible. The meeting serves two purposes: 1) it clearly communicates the fact of the discharge to the employee, and 2) it provides an opportunity to inform the employee of his or her due process rights and to answer questions about them.

A good practice is to have another authority present, such as your supervisor or personnel officer. This person will be able to provide additional information in any proceeding arising from a challenge to the discharge.

In this situation, an employee may become upset. Don't allow his or her emotions to dominate or control the meeting. You must maintain your focus on the fact of the discharge, the reasons for it (as stated in the letter), and due process rights. Any other statements are inappropriate, and they may be used against you in a challenge proceeding.

The next page provides an example of a discharge letter. The left column provides labels for the elements of the notice. These labels would not be included on an actual notice given to an employee.

example of a discharge letter

statement of discipline

Subject: Discharge

Date: December 5, 199_

Dear Mr. Doe:

This letter is to inform you that you are discharged from your position as Accountant III with this agency as of 5 p.m. today, December 5, 199_ . This action is based on your failure to follow the rules and procedures regarding leave of absence. Your disregard for the rules has been evident continually during your employment, specifically as follows:

documentation (exact dates, times, previous discipline, etc.)

1. In your first year of employment, you received four counseling sessions and two oral warnings about your failure to request leave in advance and your failure to contact your supervisor directly when you unexpectedly took a leave of absence. You were instructed during each of these sessions to request all annual leave at least three days in advance and to personally contact your bureau chief, Gene Jackson, when you took an unanticipated sick leave day.

2. Mr. Jackson met with you on May 18, 199_, to discuss a three-day unapproved absence. You received a written warning as a result of this meeting.

3. On September 8 and 9, 199_ , you again failed to appear for work and did not contact Mr. Jackson. You were suspended without pay for the two days you did not appear and for two additional days.

4. On December 1 and 2, 199_ , you again failed to appear for work and did not contact Mr. Jackson.

the just cause

You have received extensive notice of this problem and what you were expected to do to correct the problem. You have repeatedly failed to comply with the directions of your supervisor regarding use of leave, and your absences have disrupted the operations of your bureau. For these reasons, we have decided to discharge you.

notice of rights

You may provide a written response to this letter. You may also file a grievance in accordance with 3-0125, Montana Operations Manual. A copy of the state's Grievance Policy is attached, in compliance with the Wrongful Discharge from Employment Act.

You may arrange to pick up your final paycheck here or to have it mailed to you.

Sincerely,
Fred Smith, Division Administrator

the wrongful discharge from employment act

The 1987 Legislature enacted the Wrongful Discharge from Employment Act to set forth specific rights and remedies with regard to wrongful discharge. The Act took effect July 1, 1987, and applies to covered discharges from that date.

In passing the law, the legislature preempted common law actions that had previously been available to discharged employees. Such tort claims had included the tort of wrongful discharge, breach of the covenant of good faith and fair dealing, and negligence.

In place of these varied and often confusing causes of action, the legislature carved out three situations in which a discharge is wrongful:

the legislature carved out three situations in which a discharge is wrongful

1. as a retaliation against the employee for refusing to violate public policy or for reporting a violation of public policy,

2. the discharge was not for good cause, provided the employee had completed the employer's probationary period,

3. the employer violated the express provisions of its own written personnel policy.

The law also changed the statute of limitations — the period of time when a claim must be filed — to one year from the date of discharge. Previously, tort claims could be filed within a three-year time period.

The statute of limitations places other, specific obligations on the employer and employee. If the employer has a written grievance policy, as the state does, the employee must first exhaust the grievance process before filing a wrongful discharge lawsuit. ("Exhaust" means going through the process to its final stage.)

However, the employee is required to exhaust the process **only** if the employer informs the employee that the grievance procedure is available. This must be done within seven days of the date of discharge, and the employee must be given a copy of the procedure.

Finally, if the employee initiates a grievance, the employer must ensure that the process is completed within 90 days. After that period, the law deems the grievance exhausted, and the employee may go to court.

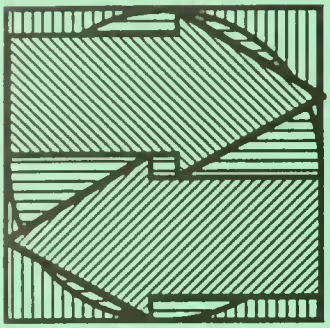
It is important for employers to follow this procedure precisely. Be sure to discuss it thoroughly with your personnel officer and legal staff before taking any action to discharge an employee.

The Act also provides two major exemptions — situations not covered under the Act:

1. a discharge that has any other remedy available under state or federal law. (For example, a discrimination claim is covered under the Montana Human Rights Act or Title VII of the federal Civil Rights Act.)

2. a discharge of an employee covered by a collective bargaining act. (Under most circumstances, union employees may not file claims under this Act.)

You can read the full text of the Wrongful Discharge from Employment Act in the appendix. A summary of Montana Supreme Court cases dealing with wrongful discharge is available from the State Personnel Division. Recent decisions have interpreted provisions of the Act.



conducting disciplinary meetings

what is the purpose of a disciplinary meeting?

It makes little sense to conduct a disciplinary meeting merely for the sake of a meeting. The meeting should have a purpose.

One important reason for meeting with the employee concerns your role as a supervisor. A well conducted meeting communicates to the employee that you take the problem seriously and want to deal with it head-on. Dealing with a disciplinary problem merely through memos or formal notices can reduce your personal effectiveness as a supervisor. It may give the impression that you are "hiding behind paper."

In conducting a meeting, you should strive to achieve four major objectives:

1. to help the employee understand the rule or policy that he or she has violated,
2. to get agreement on the existence of the problem and the need to correct it,
3. to work with the employee in developing a plan for behavioral improvement,
4. to establish a deadline for reviewing the employee's progress in correcting the problem.

how do I prepare for a meeting?

If you are not well prepared for a disciplinary meeting, it may have little effect on the employee's behavior. In fact, it can backfire on you, resulting in a more serious problem than before.

First, make sure your emotions are not governing your actions. An employee's conduct might make you angry. Whenever possible, let your anger subside so that you can deal with the problem calmly and objectively. If this means putting off the meeting until the next day, so be it — provided the particular problem behavior doesn't present a threatening or unsafe condition.

Second, give some thought to the timing of the meeting. Often, a natural impulse is to hold a meeting at the end of the day. This increases the probability that the employee will "take the problem home" and stew or fret about it. If you hold the meeting near the beginning of the work day, you and the employee can focus on solving the problem and then return to normal work activities.

how do I prepare for a meeting? (continued)

base your preparation on what you know, avoiding assumptions or jumping to conclusions

Third, think about how you will present the problem to the employee. You should be ready to do the following things:

1. clearly describe the **problem** in terms of the employee's behavior.

2. pinpoint the **evidence** that shows the employee's responsibility for the problem.

3. cite the **rule, policy**, or **standard** that proscribes the employee's behavior, as well as the **reasons** behind the rule or policy.

4. define the **results** you expect from the meeting — what you expect from the employee to correct or improve the behavior and what the appropriate behavior is.

As you prepare for the meeting, decide what you will say on the basis of what you know for sure about the situation. Avoid making assumptions or jumping to conclusions — the interview provides the opportunity for the employee to "fill in" any missing information.

any additional preparation pointers?

always plan to conduct a disciplinary meeting in private

Arrange for the meeting to be conducted in a **private place**. You don't want the employee to feel that he or she is being disciplined in front of his or her coworkers.

Your office may seem a convenient place to hold the meeting, but it has its drawbacks. First, it may be hard to prevent interruptions there. Second, you may find it difficult to end the meeting on your own terms — when the time comes, do you kick the employee out of your office?

You should meet with the employee in his or her office, if privacy can be assured, or in a neutral, private place, such as an available conference room. There will be fewer things to distract you from the purpose of the meeting. And you will be able to end the meeting without embarrassment or discomfort to the employee.

It's also important to schedule **ample time** for the meeting. Under the pressure of limited time, you are unlikely to achieve the best solution or agreement.

If you are taking formal disciplinary action against the employee, you may want to have the **written notification** ready before the meeting. Or you may want to prepare the notice afterward, based on the results of the meeting. In the latter situation, the meeting may fit the description of an "investigation," and the Weingarten rights of union employees would apply (see p. 22).

Lastly, advise your own **supervisor** of the need for the meeting. Explain the details of the situation and your intended course of action. You should keep your supervisor apprised along each step of the disciplinary process.

what about the meeting itself?

If you complete all the steps listed above, you should be well prepared to conduct the disciplinary meeting. That doesn't guarantee that it will be easy, though — few disciplinary situations are. The following tips will help you get the results you want from the meeting.

a primary objective of the meeting is to get the employee to accept responsibility for his or her behavior and for the change that must occur

1. Get right to the point. Explain the purpose of the meeting and present your viewpoint of the problem. Give the reasons why the problem must be corrected.

2. Allow the employee to present his or her response. You can keep control of the interview by asking open-ended questions (requiring more than a "yes" or "no" answer), repeating key points the employee makes, and maintaining focus on the problem to be solved.

3. Keep in mind that a primary objective of the meeting is to get the employee to accept responsibility for his or her behavior — and for the necessary change.

4. Keep the interview on a professional level. The focus must remain on job-related behaviors and not aspects of personality, attitude, or personal issues. It is important that you stay calm and objective, even if the employee does not.

5. Steer the meeting toward the results you expect. The meeting should end with a clear understanding of the required change in the employee's behavior, an agreed deadline for improvement, and, if appropriate, a written plan of action.

6. If you give the employee a written notice of formal disciplinary action during the meeting, request his or her signature, indicating the employee has received and reviewed the notice (see p. 6).

what does "Weingarten" mean?

"Weingarten" refers to a U.S. Supreme Court decision in 1975, *National Labor Relations Board v. J. Weingarten, Inc.* In that decision, the court ruled that a union member has the right to have a union representative present in an investigatory interview.

A number of NLRB and court decisions have since defined the employee's rights, and they come down to this:

1. the employee may have a union representative present at an interview that the employee reasonably believes may result in disciplinary action.

   - If the employer has already decided on disciplinary action, and the interview is only to inform the employee of the action, the right does not apply;
   - If the employer is gathering information with no intention of disciplining the particular employee, the right does not apply;
   - the important factor is how the employee perceives the meeting.

2. the union member may consult with the union representative prior to the interview.

what does "Weingarten" mean? (continued)

3. the employee may request an alternative representative if the first choice is unavailable.

   - management need not postpone the interview if management is not responsible for the first choice being unavailable.

   - management is not obliged to suggest or obtain an alternate representative.

Weingarten rights apply only when you are gathering information that might result in discipline to the employee you are interviewing

You should consider the following limitations and guidelines before conducting a meeting with a union member.

- Weingarten applies only when the purpose of the interview is **investigatory**, i.e., to gather information that may result in discipline (but the burden of proof is on management to show that an interview is not investigatory).

- Weingarten applies only when **formal disciplinary action** is probable.

- the **employee** must request representation; management is not obliged to inform the employee of that right.

- management has **no obligation** to negotiate with the union representative during the interview.

- management must grant an employee's request for **time to consult** with the representative prior to the interview.

- violation of the employee's right to representation may **invalidate** any disciplinary action.

- management is **not required** to conduct any interview with a representative present — management may decide to dispense with the interview altogether.

what about nonunion employees?

At present, nonunion employees have **no right** to representation during an investigatory interview. This situation, however, could change.

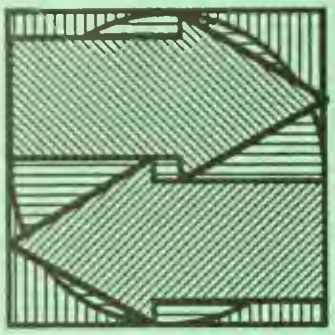
In 1982, the National Labor Relations Board extended Weingarten rights to nonunion employees, saying they could have co-workers present during investigatory interviews. Then, in 1985, the NLRB reversed that decision, denying the representation right to nonunion employees.

the status of nonunion employees' right to representation is uncertain

Federal courts have been involved in the question in cases stemming from the NLRB. They have accepted the 1982 interpretation, but have not ruled that nonunion employees have a definite right to representation during disciplinary interviews.

The NLRB and federal courts are continuing to examine the question of nonunion employee rights.

Given the uncertain status of nonunion employees' right to representation, you should **check with your personnel officer** for new developments before conducting any investigatory interviews.



employee assistance

what is employee assistance?

"Employee assistance" means an effort by management to help an employee receive counseling or treatment for a personal problem. The expected benefit of employee assistance is that the employee's conduct or performance will return to an acceptable level.

You may suggest employee assistance at any stage of the disciplinary process. Offering employee assistance is not mandatory, but it often can help in resolving a problem at work.

At the same time, you should make one thing clear to the employee: involvement in an employee assistance program does not excuse substandard conduct or performance.

what do you mean by "personal problems"?

The line that separates our personal and professional "lives" is a convenient illusion. In reality, home and work are deeply intertwined in each person's life. A problem at work can greatly affect our home life, and vice versa.

A supervisor who is effective at disciplinary counseling works with the employee in analyzing the causes of a conduct or performance problem. Sometimes, the problem at work stems from a problem in the employee's personal life. "Personal problems" may include any of the following areas:

- alcohol or drug dependency
- marital estrangement, separation, or divorce
- financial hardship
- mental illness
- illness or death of a relative
- health concerns

Yet, personal problems are just that — personal. It is beyond the supervisor's scope of authority to act as a psychologist, marriage counselor, or social worker. You must focus only on the employee's performance or conduct at work.

how do I approach employee assistance?

You will probably find it difficult to even mention the possibility that a personal problem is affecting the employee's work behavior. It is best if the employee brings up the subject, but people are often reluctant to discuss or acknowledge their personal problems.

If the employee volunteers that a personal problem underlies the work problem, you can mention employee assistance as an option. However, if you suspect the employee has a personal problem, yet the employee says nothing about it, your role is limited.

it is up to the employee to acknowledge that a personal problem exists

It is not your role to diagnose a personal problem, however strong your suspicions may be. Avoid statements like, "You have a drinking problem, and it's interfering with your work." On one hand, you may be wrong. On the other hand, even if you're right, the employee will likely become defensive and deny there is a problem.

In discussing a performance or conduct problem, you may say, "If you feel you have a personal problem that contributes to your problems at work, we might be able to help you obtain employee assistance." It is then up to the employee to acknowledge that such a problem exists.

When employee assistance is appropriate, it can take many forms:

- a list of resources for treatment or counseling on specific problems
- appropriate sick leave for attending treatment or counseling,
- information on state insurance coverage,
- temporary changes in job assignments or schedules to accommodate treatment.

You should consult with your personnel officer to determine what forms of assistance are available through your agency. The personnel officer can also help you in specific situations by monitoring whether the employee is receiving the appropriate assistance. You can continue to focus on the job.

what should I do?

- Make sure all employees are informed about and understand what is expected with regard to performance and conduct.
- Be alert, through continual observation, to any changes in work or behavior patterns of your employees.
- Document all unacceptable behavior, attendance, or performance that falls below established standards.
- Consult with your personnel officer to get assistance in determining a course of action.
- Discuss deteriorating work performance or conduct with the employee. Emphasize your concern. Stress that the

what should I do? (continued)

employee's continued employment is in jeopardy unless improvement occurs.

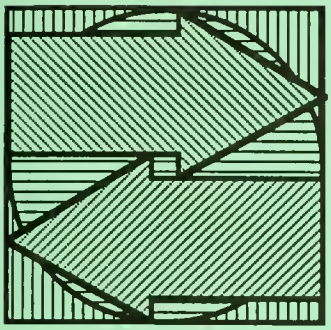
- Monitor the employee's performance and conduct. If the deterioration continues, refer the employee to assistance, if appropriate. Explain that the employee is responsible for seeking assistance.
- Be aware that an employee with a chemical dependency or emotional problem will often deny there is a problem that he or she can't handle alone. This requires that you keep your focus on the necessary work improvement, rather than battling a problem you can't solve.
- Continue monitoring performance and conduct. Promptly deal with any further problems. Referral to assistance does not excuse poor performance or inappropriate conduct.

---

what should I avoid?

- Don't try to diagnose the problem. Stick to job performance and conduct. Don't moralize.
- Avoid debating with an employee about the existence of a personal problem.
- Don't try to help an employee to solve a personal problem. It's not your business.
- Avoid discharging a previously satisfactory employee without first considering employee assistance.
- Don't try to protect an employee or cover for his or her problem.
- Don't allow the employee to play on your sympathy. This is frequently a tactic to avoid facing a problem and the need to correct it.

You can obtain additional information in the *Employee Assistance Guide*, issued by the State Personnel Division. It provides detailed advice on integrating employee assistance into the discipline process. See your personnel officer or call the State Personnel Division (444-3871) to receive a copy of the guide.



a final word

what are my resources?

You can't expect this brief guide to answer every question you might have about discipline. Nor will it help you deal with every situation that arises. As a supervisor, you should know about and make use of the various resources available to you.

The best source of information on disciplinary rules and procedures is your agency personnel officer. He or she is there to consult with you and provide technical assistance. If you have any questions about what to do, talk with the personnel officer before taking action.

what training and other information are available?

The **Professional Development Center,** a section of the State Personnel Division, offers a number of supervisory training courses. Many of them are related directly or indirectly to discipline.

Some topic areas regularly offered in training courses are ...

- disciplinary procedures
- documenting discipline
- performance appraisal
- preventing wrongful discharge
- managing conflict

You can obtain information on when these courses are offered through your personnel officer or by contacting the Professional Development Center (444-3985).

In addition, the Center can arrange to conduct the training specifically for your agency, or it can design a course to cover a given topic for your agency's supervisors. Contact the Professional Development Center Director (444-3855) for more information about these services.

You should also refer to state policies that deal with the discipline and related areas. In the Montana Operations Manual (MOM), the following policies may be pertinent:

- discipline (3-0130)
- grievances (3-0155)
- probation (3-0171)
- performance appraisal (3-0115)

Your department may also have its own policies covering these areas; you should read them thoroughly.

Finally, a summary of Montana Supreme Court cases dealing with wrongful and unlawful discharge is available. Contact the Professional Development Center (444-3985) to get more information on that booklet.

the wrongful discharge from employment act

39-2-901. Short title. This part may be cited as the "Wrongful Discharge from Employment Act".

39-2-902. Purpose. This part sets forth certain rights and remedies with respect to wrongful discharge. Except as limited in this part, employment having no specified term may be terminated at the will of either the employer or the employee on notice to the other for any reason considered sufficient by the terminating party. Except as provided in 39-2-912, this part provides the exclusive remedy for a wrongful discharge from employment.

39-2-903. Definitions. In this part, the following definitions apply:

(1) "Constructive discharge" means the voluntary termination of employment by an employee because of a situation created by an act or omission of the employer which an objective, reasonable person would find so intolerable that voluntary termination is the only reasonable alternative. Constructive discharge does not mean voluntary termination because of an employer's refusal to promote the employee or improve wages, responsibilities, or other terms and conditions of employment.

(2) "Discharge" includes a constructive discharge as defined in subsection (1) and any other termination of employment, including resignation, elimination of the job, layoff for lack of work, failure to recall or rehire, and any other cutback in the number of employees for a legitimate business reason.

(3) "Employee" means a person who works for another for hire. The term does not include a person who is an independent contractor.

(4) "Fringe benefits" means the value of any employer-paid vacation leave, sick leave, medical insurance plan, disability insurance plan, life insurance plan, and pension benefit plan in force on the date of the termination.

(5) "Good cause" means reasonable, job-related grounds for dismissal based on a failure to satisfactorily perform job duties, disruption of the employer's operation, or other legitimate business reason.

(6) "Lost wages" means the gross amount of wages that would have been reported to the internal revenue service as gross income on Form W-2 and includes additional compensation deferred at the option of the employee.

(7) "Public policy" means a policy in effect at the time of the discharge concerning the public health, safety, or welfare established by constitutional provision, statute, or administrative rule.

39-2-904. Elements of wrongful discharge. A discharge is wrongful only if:

(1) it was in retaliation for the employee's refusal to violate public policy or for reporting a violation of public policy;

(2) the discharge was not for good cause and the employee had completed the employer's probationary period of employment; or

(3) the employer violated the express provisions of its own written personnel policy.

39-2-905. Remedies. (1) If an employer has committed a wrongful discharge, the employee may be awarded lost wages and fringe benefits for a period not to exceed 4 years from the date of discharge, together with interest thereon. Interim earnings, including amounts the employee could have earned with reasonable diligence, must be deducted from the amount awarded for lost wages.

(2) The employee may recover punitive damages otherwise allowed by law if it is established by clear and convincing evidence that the employer engaged in actual fraud or actual malice in the discharge of the employee in violation of 39-9-904(1).

(3) There is no right under any legal theory to damages for wrongful discharge under this part for pain and suffering, emotional distress, compensatory damages, punitive damages, or any other form of damages except as provided for in subsections (1) and (2). [see 27-1-221, MCA, regarding "actual fraud" and "actual malice."]

39-2-906 through 39-2-910 reserved.

39-2-911. Limitation of actions. An action under this part must be filed within 1 year after the date of discharge.

(2) If an employer maintains written internal procedures, other than those specified in 39-2-912, under which an employee may appeal a discharge within the organizational structure of the employer, the employee shall first exhaust those procedures prior to filing an action under this part. The employee's failure to initiate or exhaust available internal procedures is a defense to an action brought under this part. If the employer's internal procedures are not completed within 90 days from the date the employee initiates the internal procedures, the employee may file an action under this part and for purposes of this subsection the employer's internal procedures are considered exhausted. The limitation period in subsection (1) is tolled until the procedures are exhausted. In no case may the provisions of the employer's internal procedures extend the limitation period in subsection (1) more than 120 days.

(3) If the employer maintains written internal procedures under which an employee may appeal a discharge within the organizational structure of the employer, the employer shall within 7 days of the date of the discharge notify the discharged employee of the existence of such procedures and shall supply the discharged employee with a copy of them. If the employer fails to comply with this subsection, the discharged employee need not comply with subsection (2).

39-2-912. Exemptions. This part does not apply to a discharge:

(1) that is subject to any other state or federal statute that provides a procedure or remedy for contesting the dispute. Such statutes include those that prohibit discharge for filing complaints, charges, or claims with administrative bodies or that prohibit unlawful discrimination based on race, national origin, sex, age, handicap, creed, religion, political belief, color, marital status, or any other similar grounds.

(2) of any employee covered by a written collective bargaining agreement or written contract of employment for a specific term.

39-2-913. Preemption of common-law remedies. Except as provided in this part, no claim for discharge may arise from tort or express or implied contract.

39-2-914. Arbitration. (1) Under a written agreement of the parties, a dispute that otherwise could be adjudicated under this part may be resolved by final and binding arbitration as provided in this section.

(2) An offer to arbitrate must be in writing and contain the following provisions:

(a) a neutral arbitrator must be selected by mutual agreement or, in the absence of agreement, as provided in 27-5-211.

(b) The arbitration must be governed by the Uniform Arbitration Act, Title 37, chapter 5. If there is a conflict between the Uniform Arbitration Act and this part, this part shall apply.

(c) The arbitrator is bound by this part.

(3) If a complaint is filed under this part, the offer to arbitrate must be made within 60 days after service of the complaint and must be accepted in writing within 30 days after the date the offer is made.

(4) A party who makes a valid offer to arbitrate that is not accepted by the other party and who prevails in an action under this part is entitled as an element of costs to reasonable attorney fees subsequent to the date of the offer.

(5) A discharged employee who makes a valid offer to arbitrate that is accepted by the employer and who prevails in such arbitration is entitled to have the arbitrator's fee and all costs of arbitration paid by the employer.

(6) If a valid offer to arbitrate is made and accepted, arbitration is the exclusive remedy for the wrongful discharge dispute and there is no right to bring or continue a lawsuit under [sections 1 through 8]. The arbitrator's award is final and binding, subject to review of the arbitrator's decision under the provisions of the Uniform Arbitration Act.

State of Montana

Corrective Interview

name | title

department | division | bureau

Your performance or conduct needs improvement in the following areas:
(Supervisor - complete before interview; specify exact behavior plus the rules, policies, procedures violated)

The following actions will be taken by you to correct the problem.
(Supervisor - complete during the interview)

Time frame for improvement:

The following assistance will be provided to help you accomplish the desired solution (if necessary).

Employee
This form will be placed in your personnel file. You have the right to receive a copy of this form, and to respond verbally, in writing, or both to this interview. Your response will be included in your personnel file. If you do not improve or correct the problem as described, disciplinary action may be taken against you.

We will meet to review accomplishments under this plan on: _____

_____ Signature of Supervisor

_____ Date

_____ Signature of Employee

_____ Date

Conclusions of review:

addn. pages ___ yes ___ no

Written Warning Notice

State of Montana

name title

department division bureau

Cause (Supervisor - specify exact times, places, dates, rules violated, previous disciplinary action, etc.)
This written warning is issued for the following reasons:

Correction
To improve or correct this problem, you must:

Time frame for improvement:

Consequences Of Failure
If you do not improve or correct the problem as outlined in this notice, additional disciplinary action may be taken against you, up to and including discharge.

Signature of Management Date

Notice of Rights

This notice will be placed in your personnel file. You have the right to receive a copy of this notice, and to respond verbally, in writing, or both to this warning notice. Your response will be kept in your personnel file. You may file a grievance based on this disciplinary action. Your signature indicates you have received this notice - not necessarily that you agree with its content.

Employee's Signature Date

complete only if the employee refuses to sign this notice

employee's name has received a copy of this written warning notice

signature of witness _____ date _____

addn. pages ___ yes ___ no

Suspension Notice

State of Montana

name title

department division bureau

Notice of Disciplinary Suspension

Your suspension begins on ..... and ends ..... . You are expected to return to work on .....

Cause (Supervisor - specify exact times, places, dates, rules violated, previous disciplinary action, etc.)

This suspension is issued for the following reasons:

Correction

To improve or correct this problem, you must:

Time frame for improvement:

Consequences Of Failure

If you do not improve or correct the problem as outlined in this notice, additional disciplinary action may be taken against you, up to and including discharge.

Signature of Management Date

Notice of Rights

This notice will be placed in your personnel file. You have the right to receive a copy of this notice, and to respond verbally, in writing, or both to this suspension notice. Your response will be kept in your personnel file. You may file a grievance based on this disciplinary action. Your signature indicates you have received this notice - not necessarily that you agree with its content.

Employee's Signature Date

complete only if the employee refuses to sign this notice

employee's name has received a copy of this suspension notice

signature of witness _____ date _____

addn. pages ___ yes ___ no